AFR (52)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

WRIT PETITION NO. 4408 OF 1994

Petitioner : General Manager, Bengal Cotton Mills, (A Unit of National Textile Corporation M.P. Ltd. Indore) Rajnandgaon.

Versus

Respondents :1. State of Madhya Pradesh, Through Secretary to the Govt. of Madhya Pradesh, Labour Department, Bhopal.

2. Industrial Court of Madhya Pradesh, Raipur Bench, HIG-16, Shankar Nagar, Raipur. District Rajnandgaon (C.G.).

3. Budhiyarin Bai, wife of Nipilu Das,Tulsipur, District-Rajnandgaon

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Present: Shri N.K. Vyas, counsel for the petitioner.
Shri H.B. Agrawal, Senior Counsel with Shri Pankaj Agrawal, Counsel for the respondents No. 3.

ORAL ORDER

(9th January, 2006)

Heard.

1. This writ petition filed under Articles 226 & 227 of the Constitution of India is directed against the common order passed by the Industrial Court, Bench at Raipur, in case No. 32/MPIR/92 and Appeal No. 50/MPIR/92 on 6.9.1994 (Annexure-VI).

2. The respondent No. 3 was engaged on daily-wages as unskilled worker on temporary basis. The petitioner was served a charge sheet for committing an offence of theft from the mill on 17.11.1980 and domestic enquiry was conducted, wherein the respondent No. 3 participated in the enquiry and charge of theft was found proved. As a result, the service of the respondent No. 3 was terminated by order dated 14.1.1981 (Annexure P-II).

3. Being aggrieved, the respondent No. 3 filed an application under Section 31 (3) of the M.P. Industrial Relations Act, 1960 (Hereinafter referred to as "MPIRA") praying that the enquiry conducted against her was not proper and the sole charge of theft, which has been found, proved in the enquiry was also bad. The Labour Court by its order dated 29.4.1982 (Annexure-III) rejected her application against the order dated 14.1.1981. The petitioner preferred an appeal being the appeal No. 320/MPIR/82 in the Industrial Court. The Industrial Court vide order dated 7.10.1983 (Annexure-IV), set-aside the order dated 29.04.1982, passed by the Labour Court and remitted back the matter to the Labour Court for fresh decision after giving an opportunity of hearing to the petitioner as well as the respondent No. 3 in order to prove the misconduct of the respondent No. 3.

4. Labour Court Rajnandgaon, after having afforded an opportunity of hearing to both the parties came to the conclusion that the respondent No. 3 had committed misconduct of theft of the company's property vide order

dated 28.01.1992 (Annexure-V). However in exercise of its power under Section 107-A of the MPIRA, directed reinstatement of the respondent No. 3 without back wages.

5. Being aggrieved, the petitioner filed an appeal before the Industrial Court, being appeal No. 32/MPIR/92 challenging the order of reinstatement, passed by the Labour Court. The respondent No.3 also filed an appeal No. 50/MPIR/92 challenging the order of Labour Court, whereby the Labour Court has held that she was found guilty of misconduct of theft of company's property and she was denied the back-wages. The Industrial Court by the common order dated 6.9.1994, allowed the appeal filed by the respondent No. 3 and dismissed the appeal filed by the management (petitioner herein) holding that the Labour Court had not examined all the depositions and facts of the case before coming to the conclusion that the respondent No. 3 was guilty of committing an offence of theft of company's property. Accordingly, the Industrial Court directed reinstatement with full back wages.

6. Being aggrieved, the management/petitioner has filed this petition challenging the impugned order dated 6.9.1994 passed by the Industrial Court.

7. Shri N.K.Vyas, learned counsel appearing for the petitioner submits that the Labour Court was justified in holding that she has committed an offence of theft of company's property, in view of admission in her deposition. Learned counsel further submitted that the Labour Court has not considered

the deposition of security guards because the respondent No. 3 herself had admitted her offence.

8. Shri H.B. Agrawal, learned Senior Counsel with Shri Pankaj Agrawal, learned counsel appearing for the respondent No. 3, per contra, submitted in support of the impugned order that the finding of facts recorded by the Labour Court was perverse. The Labour Court has not considered the clear statement of the security guards to the effect that they had not caught the respondent No. 3 carrying with any bag while going out of the mill's premises. It was the case of the respondent No. 3 that she found bag outside the mill premises which contained certain articles and she had admitted the articles present in the said bag and had not accepted the offence committed by her.

9. I have heard learned counsel for the parties and perused the records, I am of the view that the Labour Court has committed manifest error in not considering clear depositions of security guards, wherein they had clearly and unambiguously stated that they had not seen her carrying any bag from inside the premises, she was caught outside the premises with the bag, which contained certain articles. The fact of articles found in the bag has been admitted by the respondent No. 3. The Industrial Court has carefully examined all the facts and depositions before coming to the conclusion that theft has not been found proved. The facts recorded by the Industrial Court are justified and supported by the proper evidence and cogent reasons.

10. For the reasons stated above, it does not warrant for any interference with the order passed by the Industrial Court in exercise of power of this court under Articles 226/227 of the Constitution of India. Further on the facts of back wages, when the petitioner was employed on daily wage basis and she remained outside the job for about 11 years from 14.1.1981 to 21.1.1992, in view of the long period involved, and no work was performed by the respondent No. 3, granting 100% full back wages would be wholly inappropriate and burden on the employer, when the company has been closed.

11. In the facts and circumstances of the case, 30% back wages would be sufficient in the interest of justice. The petition is allowed to the above extent. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Bablu